

Supreme Court, U. S.

FILED

OCT 18 1977

MICHAEL RODAK, JR., CLERK

No. 77-386

In the Supreme Court of the United States

OCTOBER TERM, 1977

JOHNNIE FLANNIGAN, PETITIONER

v.

**BENJAMIN F. BAILAR, POSTMASTER GENERAL OF
THE UNITED STATES, ET AL.**

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

**MEMORANDUM FOR THE RESPONDENTS
IN OPPOSITION**

**WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.**

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The petition for a writ of certiorari was filed out of time. The judgment of the court of appeals in this civil action was entered on April 13, 1977 (App., *infra*).¹ The time for filing a petition for a writ of certiorari was not extended, and it therefore expired on July 12, 1977. 28 U.S.C. 2101(c). The petition was not filed until August 4,

¹Petitioner wrongly asserts that the judgment was entered on May 6, 1977 (Pet. 2). That date was the date entry of the judgment was made on the dockets of the district court following issuance of the mandate. (Some copies of the judgment bear a stamp reading "FILED, May 6, 1976 [*sic*] William L. Whittaker, Clerk." But Mr. Whittaker is Clerk of the District Court for the Northern District of California, not of the Ninth Circuit Court of Appeals.)

1977. Accordingly, this Court lacks jurisdiction over the case. *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 417-418.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

OCTOBER 1977.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOHNNIE FLANNIGAN,
PLAINTIFF-APPELLANT,

VS.

BENJAMIN F. BAILAR, POST MASTER GENERAL OF THE
UNITED STATES; ROBERT E. HAMPTON, CHAIRMAN,
UNITED STATES CIVIL SERVICE COMMISSION, ET AL.,
DEFENDANTS-APPELLEES.,

No. 76-1734

DC #CV 75-2162 RHS

APPEAL from the United States District Court for
the NORTHERN District of CALIFORNIA

THIS CAUSE came on to be heard on the Transcript
of the Record from the United States District Court for
the NORTHERN District of CALIFORNIA

_____ and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here
ordered and adjudged by this Court, that the _____
judgment of the said District Court in this Cause be, and
hereby is affirmed.

Filed and entered April 13, 1977.